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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission

PR Docket No. 93-61
RM 8013

ADDITIONAL COMMENTS OF THE INTERAGENCY GROUP

New Jersey Highway Authority
New Jersey Turnpike Authority
New York State Thruway Authority
Pennsylvania Turnpike Commission
Port Authority of N.Y. and N.J.
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Adopt
Regulations for Automatic
Vehicle Monitoring Systems

PR Docket No. 93-61
RM 8013

TO: The Commission

ADDITIONAL COMMENTS OF THE INTERAGENCY GROUP

The New Jersey Highway Authority, the New Jersey Turnpike Authority, the New York State Thruway Authority, the Pennsylvania Turnpike Commission, the Port Authority of New York and New Jersey, the South Jersey Transportation Authority, and the Triborough Bridge and Tunnel Authority (hereinafter "the Interagency Group"), by their attorneys, hereby submit Additional Comments in response to the Commission's February 9, 1994 Notice seeking additional comments with respect to certain ex parte presentations submitted in the above-captioned matter.

In its initial Comments regarding the Commission's proposal to issue permanent rules for automatic vehicle monitoring ("AVM") systems, the Interagency Group urged the Commission to ensure that such rules provide the maximum flexibility necessary for users to make cost-effective, performance-based choices among a variety of AVM technologies in a competitive marketplace. The Interagency Group also expressed its concern that the Commission's tentative

proposal to partition the 902-928 MHz band, in order to insulate "wide-band pulse-ranging" systems from so-called "narrow-band" systems, is inconsistent with the goal of flexibility and is based on mistaken assumptions regarding interference problems and spectrum usage distinctions among existing AVM system technologies. Finally, the Interagency Group asked the Commission to address in its rulemaking the special needs of Government and quasi-Government entities that are using AVM technologies to implement electronic toll collection and other advanced traffic management systems under the mandate of the Intelligent Vehicle-Highway Systems Act of 1991.

In its Reply Comments, the Interagency Group urged the Commission to reexamine the rationale for its proposals in light of clear indications from the Comments (reiterated in other Reply Comments) that the key premises underlying the NPRM's tentative allocation scheme are widely disputed and lack sufficient factual support to justify the proposal. In particular, the Commission was urged to make detailed factual findings regarding (1) the impact that "sharing" of the 902-928 MHz band under the current interim rules has had on the development and deployment of AVM systems; (2) the nature and extent of AVM system interference problems, and the technological and regulatory means of avoiding and resolving them; (3) the categorization of AVM technologies and systems for comparative regulatory purposes; and, (4) the special regulatory needs of governmental entities that are planning or implementing the deployment of spectrum-dependent electronic toll and traffic

management (ETTM) systems, such as the Interagency Group's regional E-ZPass Plan.

In response to the Commission's February 9 Notice seeking additional comments in this proceeding regarding the ex parte presentations of PacTel Teletrac ("PacTel") and Southwestern Bell Mobile Systems, Inc. ("SBMS"), the Interagency Group submits the following:

The PacTel and SBMS ex parte presentations underline the need for detailed factual findings, clearly supported by evidence on the record, regarding interference problems, bandwidth requirements, and the needs of AVM system users before the Commission can justify its proposed departure from the "shared band" scheme under the "interim" rules.

The recent ex parte presentations of PacTel and SBMS lead the Interagency Group to once again caution that the Commission should not allow self-serving representations by providers of different AVM systems to overshadow the marketplace needs of AVM service users in shaping its proposed revision of the AVM rules.

As has already been pointed out in the February 1, 1994 ex parte submission by MobileVision, the recent PacTel proposal and discussion is sharply at odds with the basic positions articulated in all previous PacTel submissions in this proceeding, including the technical testimony of its own expert (i.e., Pickholtz). The Commission, which uncritically accepted most of PacTel's earlier representations and recommendations as the bases for the NPRM's proposed new allocation and licensing scheme for AVM services, cannot now entertain the merits of PacTel's new proposal without questioning the underlying premises of its NPRM proposal.

PacTel's explanation for its shifting position is neither clear nor complete, but its new proposal can be seen as troubling in at least one key respect. Although it is an improvement over the NPRM in terms of the increased amount of contiguous spectrum that would be made available for local-area AVM systems, the new PacTel allocation scheme, like the NPRM scheme based on PacTel's earlier proposal, would provide preferential regulatory treatment for wide-band pulse ranging AVM systems without any justification based on AVM service user needs and market demand. An allocation scheme of this nature is contrary to the goal that the Interagency Group has urged the Commission to adopt in this proceeding, i.e., AVM service rules that provide regulatory predictability without eliminating the market flexibility necessary to ensure that AVM service users will have diverse, competing provider options to facilitate cost-effective, performance-based choices among available AVM systems.

The recent SBMS proposal is even more troubling than PacTel's in terms of its net effect in limiting the options of system users and shaping the regulatory landscape for AVM services to maximize the advantage of current providers and technologies over their potential competition. While purporting to accomodate the PacTel and MobileVision wide-area systems with four exclusive 4 MHz blocks (an effort the erstwhile beneficiaries are likely to contest), the SBMS proposal ignores the minimum bandwidth needs of local-area AVM system users, including the Interagency Group and its ETMM project, and urges the allocation of 3 subbands of less than 4 MHz each for

local-area and so-called narrow-band systems. Under such a scheme, the Interagency Group could be restricted or foreclosed from implementing a system after selecting either of the two competing systems that are now under final consideration for implementing its E-ZPass Plan after extensive (and expensive) procurement and testing proceedings.

It should now be apparent to the Commission that much of the criticism of the "shared band" scheme under the current "interim" rules, including claims that they have hindered the development of AVM services and promoted insuperable interference problems, has merely been pretext for proprietary campaigns to restructure the AVM regulatory environment to restrictive competitive advantage. To the extent that this has led the Commission to misplace the interests of AVM service providers above those of AVM service users in the NPRM, the Commission should not hesitate to correct its course through factual determinations regarding the merits of these arguments based on the overall record of this proceeding.

The prompt resolution of this proceeding is critical for current ETTM system deployment efforts by the Interagency Group and others with a substantial public interest stake in implementation of Intelligent Vehicle Highway Systems.

In previous comments, while urging the Commission to carefully consider the diverse interests of all current and potential AVM service users in shaping its AVM service rules, the Interagency Group has urged the Commission to address the special needs and obligations of entities like the members of the Interagency Group in their efforts to implement large-scale, public AVM services such

as the E-ZPass Plan.

Specifically, the Interagency Group urged the Commission to provide (1) extended implementation, or "build-out," schedules for ETTM and other public service AVM systems; (2) co-primary status for ETTM and other public service AVM licensees; and, (3) blanket license authorizations for multijurisdictional or regional ETTM and other public service AVM systems.

Without reiterating the details of the E-ZPass Plan as they have been summarized in previous filings in this proceeding, the Interagency Group would note that, in the year since the NPRM was adopted by the Commission, substantial strides have been made in advancing toward the critical final stage of system selection. In addition to the completion of basic operational tests of competing vendor technologies, further testing was undertaken and completed to determine how these technologies and the Plan's own operational specifications would be impacted by the proposed revision of the spectrum allocation and licensing scheme in the NPRM.

As the Interagency Group prepares to move forward with final selection and deployment of the technology to implement its plan for electronic toll collection, the need for the Commission to bring the pending proceeding to completion becomes more acute. To the extent that much of the operational design of the plan has been based on the existing "interim" AVM rules, the Interagency Group has an immediate need to know whether the rules are to be revised in any way that may significantly affect the choice and deployment

of system technology. To the extent that the Commission has been urged to address the special needs of projects like the E-ZPass Plan by responding to specific proposals that would substantially affect their implementation, the Interagency Group has an immediate need to receive a response from the Commission.

In its earlier Reply Comments, the Interagency Group urged the Commission to note the increasing interest that other State and local transportation agencies and related representative groups are taking in this proceeding as reflected by their participation in filing Comments and Reply Comments. As these agencies progress in their development and implementation of ETTM and other IVHS projects, they share the need of the members of the Interagency Group to know as soon as possible how the Commission will resolve the pending proceeding.

The Interagency Group understands the Commission's decision to seek additional comments regarding the PacTel and SBMS ex parte presentations. Although the Interagency Group has not taken any specific position regarding whether BTAs or, alternatively, MSAs and RSAs should be used as licensing boundaries, it recognizes that these proposals require careful consideration by the Commission so that the interests of AVM service users, including the Interagency Group, are usefully served by any decision the Commission may make.

Nevertheless, the Interagency Group urges the Commission not to let this matter or any other element of the recent ex parte presentations cause further significant delay in its completion of

the pending proceeding. The initial rounds of Comments and Reply Comments in this proceeding have, in the view of the Interagency Group, given the Commission an adequate basis for reassessing the merits of the proposals in the NPRM insofar as they would sharply depart from the "shared band" concept of the current "interim" rules. As discussed above, the Interagency Group believes that the recent ex parte presentations provide further justification for the Commission to conclude that the proposals in the NPRM are neither necessary nor appropriate for adoption at this time.

Respectfully Submitted,



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March 15, 1994